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16 | *Attorneys for Defendant*

20 RICHARD SOTELO, on behalf of
21 himself and all others similarly
situated.

22 || Plaintiff,

23 | v.

24 RAWLINGS SPORTING GOODS COMPANY, INC..

Defendant.

| Case No.: 2:18-cv-09166-GW-MAA

**[PROPOSED] ORDER GRANTING
STIPULATED PROTECTIVE
ORDER**

1 **1.A. PURPOSES AND LIMITATIONS**

2 Discovery in this action is likely to involve production of confidential,
3 proprietary, or private information for which special protection from public
4 disclosure and from use for any purpose other than prosecuting this litigation may
5 be warranted. Accordingly, the parties hereby stipulate to and petition the Court to
6 enter the following Stipulated Protective Order. The parties acknowledge that this
7 Order does not confer blanket protections on all disclosures or responses to
8 discovery and that the protection it affords from public disclosure and use extends
9 only to the limited information or items that are entitled to confidential treatment
10 under the applicable legal principles. The parties further acknowledge, as set forth
11 in Section 12.3, below, that this Stipulated Protective Order does not entitle them to
12 file confidential information under seal; Civil Local Rule 79-5 sets forth the
13 procedures that must be followed and the standards that will be applied when a
14 party seeks permission from the court to file material under seal.

15

16 **1.B. GOOD CAUSE STATEMENT**

17 This action, which is a class action against a sporting goods company
18 regarding the specifications, marketing, and labeling of its baseball bats, is likely to
19 involve trade secrets, customer and pricing lists and other valuable research,
20 development, commercial, financial, technical and/or proprietary information for
21 which special protection from public disclosure and from use for any purpose other
22 than prosecution of this action is warranted. Such confidential and proprietary
23 materials and information consist of, among other things, confidential business or
24 financial information, information regarding confidential business practices, or other
25 confidential research, development, or commercial information (including
26 information implicating privacy rights of third parties), information otherwise
27 generally unavailable to the public, or which may be privileged or otherwise

1 protected from disclosure under state or federal statutes, court rules, case decisions,
2 or common law. Accordingly, to expedite the flow of information, to facilitate the
3 prompt resolution of disputes over confidentiality of discovery materials, to
4 adequately protect information the parties are entitled to keep confidential, to ensure
5 that the parties are permitted reasonable necessary uses of such material in
6 preparation for and in the conduct of trial, to address their handling at the end of the
7 litigation, and serve the ends of justice, a protective order for such information is
8 justified in this matter. It is the intent of the parties that information will not be
9 designated as “Confidential” or “Highly Confidential – Attorneys Eyes Only” for
10 tactical reasons and that nothing be so designated without a good faith belief that it
11 has been maintained in a confidential, non-public manner, and there is good cause
12 why it should not be part of the public record of this case.

13

14 **2. DEFINITIONS**

15 2.1 Action: [this pending federal law suit].

16 2.2 Challenging Party: a Party or Non-Party that
17 challenges the designation of information or items under this Order.

18 2.3 “CONFIDENTIAL” Information or Items: information (regardless
19 of how it is generated, stored or maintained) or tangible things that qualify for
20 protection under Federal Rule of Civil Procedure 26(c), and as specified
21 above in the Good Cause Statement.

22 2.4 Counsel: Outside Counsel of Record and House Counsel (as well
23 as their support staff).

24 2.5 Designating Party: a Party or Non-Party that designates
25 information or items that it produces in disclosures or in responses to
26 discovery as “CONFIDENTIAL.” or HIGHLY CONFIDENTIAL –
27 ATTORNEYS EYES ONLY.”

28

1 2.6 Disclosure or Discovery Material: all items or information,
2 regardless of the medium or manner in which it is generated, stored, or
3 maintained (including, among other things, testimony, transcripts, and tangible
4 things), that are produced or generated in disclosures, responses to discovery, or
5 discussions regarding resolution in this matter.

6 2.7 Expert: a person with specialized knowledge or experience in a
7 matter pertinent to the litigation who has been retained by a Party or its counsel
8 to serve as an expert witness or as a consultant in this Action. Any employee of
9 a Receiving Party who is designated as an Expert shall be bound by Section 7,
10 below.

11 2.8 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"
12 Information or Items: extremely sensitive "Confidential Information or Items,"
13 disclosure of which to another Party or Non-Party would create a substantial risk
14 of serious harm that could not be avoided by less restrictive means.

15 2.9 Non-Party: any natural person, partnership, corporation,
16 association, or other legal entity not named as a Party to this action.

17 2.10 Outside Counsel of Record: attorneys who are not employees of a
18 party to this Action but are retained to represent or advise a party to this Action
19 and have appeared in this Action on behalf of that party or are affiliated with a
20 law firm which has appeared on behalf of that party, and includes support staff.

21 2.11 Party: any party to this Action, including all of its officers,
22 directors, employees, consultants, retained experts, and Outside Counsel of
23 Record (and their support staffs).

24 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
25 Discovery Material in this Action.

26 2.13 Professional Vendors: persons or entities that provide litigation
27 support services (e.g., photocopying, videotaping, translating, preparing exhibits

1 or demonstrations, and organizing, storing, or retrieving data in any form or
2 medium) and their employees and subcontractors.

3 2.14 Protected Material: any Disclosure or Discovery Material that is
4 designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL.”

5 2.15 Receiving Party: a Party that receives Disclosure or Discovery
6 Material from a Producing Party.

7

8 3. SCOPE

9 The protections conferred by this Stipulation and Order cover not only
10 Protected Material (as defined above), but also (1) any information copied or
11 extracted from Protected Material; (2) all copies, excerpts, summaries, or
12 compilations of Protected Material; and (3) any testimony, conversations, or
13 presentations by Parties or their Counsel that might reveal Protected Material.
14 However, the protections conferred by this Stipulation and Order do not cover the
15 following information: (a) any information that is in the public domain at the time
16 of disclosure of the Receiving Party or becomes part of the public domain after its
17 disclosure to a Receiving Party as a result of publication not involving a violation
18 of this Order, including becoming part of the public record through trial or
19 otherwise; and (b) any information known to the Receiving Party prior to the
20 disclosure or obtained by the Receiving Party after the disclosure from a source
21 who obtained the information lawfully and under no obligation of confidentiality to
22 the Designating Party.

23 Any use of Protected Material at trial shall be governed by the orders
24 of the trial judge. This Order does not govern the use of Protected Material at trial.
25

1 **4. DURATION**

2 Even after final disposition of this litigation, the confidentiality obligations
3 imposed by this Order shall remain in effect until a Designating Party agrees
4 otherwise in writing or a court order otherwise directs. Final disposition shall be
5 deemed to be the later of (1) dismissal of all claims and defenses in this Action,
6 with or without prejudice; and (2) final judgment herein after the completion and
7 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,
8 including the time limits for filing any motions or applications for extension of
9 time pursuant to applicable law.

10 **5. DESIGNATING PROTECTED MATERIAL**

11 **5.1 Exercise of Restraint and Care in Designating Material for**
12 **Protection.** Each Party or Non-Party that designates information or items for
13 protection under this Order must take care to limit any such designation to
14 specific material that qualifies under the appropriate standards.

15 If it comes to a Designating Party's attention that information or items that it
16 designated for protection do not qualify for protection at all or do not qualify for
17 the level of protection initially asserted, that Designating Party must promptly
18 notify all other Parties that it is withdrawing the inapplicable designation.

19 **5.2 Manner and Timing of Designations.** Except as otherwise provided in
20 this Order (see, e.g., second paragraph of section 5.2(a) below), or as otherwise
21 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
22 under this Order must be clearly so designated before the material is disclosed or
23 produced.

24 Designation in conformity with this Order requires:

25 (a) for information in documentary form (e.g., paper or electronic
26 documents, but excluding transcripts of depositions or other pretrial or trial

1 proceedings), that the Producing Party affix at a minimum, the legend
2 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL–ATTORNEYS EYES
3 ONLY,” to each page that contains protected material or to another appropriate
4 location (such as, for example, a filename or storage device label for electronic or
5 native files.

6 A Party or Non-Party that makes original documents or materials
7 available for inspection need not designate them for protection until after the
8 inspecting Party has indicated which documents or material it would like copied
9 and produced. During the inspection and before the designation, all of the material
10 made available for inspection shall be deemed “HIGHLY CONFIDENTIAL–
11 ATTORNEYS EYES ONLY.” After the inspecting Party has identified the
12 documents it wants copied and produced, the Producing Party must determine
13 which documents, or portions thereof, qualify for protection under this Order.
14 Then, before producing the specified documents, the Producing Party must affix
15 the appropriate legend (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL–
16 ATTORNEYS EYES ONLY”) to each page that contains Protected Material. If
17 only a portion or portions of the material on a page qualifies for protection, the
18 Producing Party also must clearly identify the protected portion(s) (e.g., by making
19 appropriate markings in the margins) and must specify, for each portion, the level
20 of protection being asserted.

21 (b) for testimony given in depositions or in other pretrial or trial
22 proceedings, that the Designating Party identify on the record, before the close of
23 the deposition, hearing, or other proceeding, all protected testimony and specify
24 the level of protection being asserted. When it is impractical to identify separately
25 each portion of testimony that is entitled to protection and it appears that
26 substantial portions of the testimony may qualify for protection, the Designating
27 Party may invoke on the record (before the deposition, hearing, or other

1 proceeding is concluded) a right to have up to 30 days to identify the specific
2 portions of the testimony as to which protection is sought and to specify the level
3 of protection being asserted. Only those portions of the testimony that are
4 appropriately designated for protection within the 30 days shall be covered by the
5 provisions of this Stipulated Protective Order. Alternatively, a Designating Party
6 may specify, at the deposition or up to 30 days afterwards if that period is properly
7 invoked, that the entire transcript shall be treated as “CONFIDENTIAL” or
8 “HIGHLY CONFIDENTIAL–ATTORNEYS’ EYES ONLY.”

9 Parties shall give the other parties notice if they reasonably expect a
10 deposition, hearing or other proceeding to include Protected Material so that the
11 other parties can ensure that only authorized individuals who have signed the
12 “Acknowledgment and Agreement to Be Bound” (Exhibit A) are present at those
13 proceedings. The use of a document as an exhibit at a deposition shall not in any
14 way affect its designation as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL–
15 ATTORNEYS’ EYES ONLY.” Transcripts containing Protected Material shall
16 have an obvious legend on the title page that the transcript contains Protected
17 Material, and the title page shall be followed by a list of pages (including line
18 numbers as appropriate) that have been designated as Protected Material and the
19 level of protection being asserted by the Designating Party. The Designating Party
20 shall inform the court reporter of the requirements. Any transcript that is prepared
21 before the expiration of a 30-day period for designation shall be treated during that
22 period as if it had been designated “HIGHLY CONFIDENTIAL–ATTORNEYS’
23 EYES ONLY” in its entirety unless otherwise agreed. After the expiration of that
24 period, the transcript shall be treated only as actually designated.

25 (c) for information produced in some form other than documentary and
26 for any other tangible items, that the Producing Party affix in a prominent place on
27 the exterior of the container or containers in which the information is stored the

1 legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL–ATTORNEYS’
2 EYES ONLY.” If only a portion or portions of the information warrants protection,
3 the Producing Party, to the extent practicable, shall identify the protected
4 portion(s).

5 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
6 failure to designate qualified information or items does not, standing alone, waive
7 the Designating Party’s right to secure protection under this Order for such
8 material. Upon timely correction of a designation, the Receiving Party must make
9 reasonable efforts to assure that the material is treated in accordance with the
10 provisions of this Order.

11

12 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

13 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
14 designation of confidentiality at any time that is consistent with a scheduling or
15 other order of the Court.

16 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
17 resolution process under Local Rule 37.1 et seq.

18 6.3 The burden of persuasion in any such challenge proceeding shall be
19 on the Designating Party. Frivolous challenges, and those made for an improper
20 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
21 parties) may expose the Challenging Party to sanctions. Unless the Designating
22 Party has waived or withdrawn the confidentiality designation, all parties shall
23 continue to afford the material in question the level of protection to which it is
24 entitled under the Producing Party’s designation until the Court rules on the
25 challenge.

1 7. ACCESS TO AND USE OF PROTECTED MATERIAL

2 7.1 Basic Principles. A Receiving Party may use Protected Material that is
3 disclosed or produced by another Party or by a Non-Party in connection with this
4 Action only for prosecuting, defending, or attempting to settle this Action. Such
5 Protected Material may be disclosed only to the categories of persons and under
6 the conditions described in this Order. When the Action has been terminated, a
7 Receiving Party must comply with the provisions of section 13 below (FINAL
8 DISPOSITION).

9 Protected Material must be stored and maintained by a Receiving Party at a
10 location and in a secure manner that ensures that access is limited to the persons
11 authorized under this Order.

12 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
13 otherwise ordered by the court or permitted in writing by the Designating Party, a
14 Receiving Party may disclose any information or item designated
15 “CONFIDENTIAL” only to:

16 (a) the Receiving Party’s Counsel in this Action, as well as employees of
17 said Outside Counsel of Record to whom it is reasonably necessary to disclose the
18 information for this Action;

19 (b) the officers, directors, and employees of the Receiving Party to whom
20 disclosure is reasonably necessary for this Action and who have signed the
21 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

22 (c) Experts (as defined in this Order) of the Receiving Party to whom
23 disclosure is reasonably necessary for this Action and who have signed the
24 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

25 (d) the court and its personnel;

26 (e) court reporters and their staff;

(f) professional jury or trial consultants, mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for this Action;

(g) the author, addressee or carbon copy recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information. In addition, regardless of its designation, if the document makes reference to the actual or alleged conduct or statement of a person, Counsel may discuss such conduct or statements with such person, provided that such ; discussions do not disclose or reveal any other Protected Material. Notwithstanding any other provision, nothing in this Order shall prohibit Counsel for a party from disclosing Protected Material of a Producing Party to any witness appearing on behalf of that Producing Party, including expert witnesses, witnesses appearing at trial, or witnesses appearing in a Rule30(b)(1) or Rule30(b)(6) deposition; and

(h) any mediator or settlement officer, and their supporting personnel, mutually agreed upon by any of the parties engaged in settlement discussions.

7.3 Disclosure of “HIGHLY CONFIDENTIAL–ATTORNEYS’ EYES ONLY” Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY CONFIDENTIAL–ATTORNEYS’ EYES ONLY” only to:

(a) the Receiving Party's Counsel in this action, as well as employees of said Counsel to whom it is reasonably necessary to disclose the information for this litigation;

(b) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary for this litigation, (2) who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(c) the court and its personnel;

(d) court reporters and their staff, professional jury or trial consultants,

1 and Professional Vendors to whom disclosure is reasonably necessary for this
2 litigation; and

3 (e) the author, addressee, or carbon copy recipient of a document
4 containing the information or a custodian or other person who otherwise possessed
5 or knew the information. In addition, regardless of its designation, if the document
6 makes reference to the actual or alleged conduct or statement of a person, Counsel
7 may discuss such conduct or statements with such person, provided that such
8 discussions do not disclose or reveal any other Protected Material.

9

10 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**
11 **OTHER LITIGATION**

12 If a Party is served with a subpoena or a court order issued in other litigation
13 that compels disclosure of any information or items designated in this Action as
14 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL-ATTORNEYS’ EYES
15 ONLY,” that Party must:

16 (a) promptly notify in writing the Designating Party. Such notification shall
17 include a copy of the subpoena or court order;

18 (b) promptly notify in writing the party who caused the subpoena or order to
19 issue in the other litigation that some or all of the material covered by the
20 subpoena or order is subject to this Protective Order. Such notification shall
21 include a copy of this Stipulated Protective Order; and

22 (c) cooperate with respect to all reasonable procedures sought to be pursued
23 by the Designating Party whose Protected Material may be affected.

24 If the Designating Party timely seeks a protective order, the Party served
25 with the subpoena or court order shall not produce any information designated in
26 this action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL-ATTORNEYS
27 EYES ONLY” before a determination by the court from which the subpoena or

1 order issued, unless the Party has obtained the Designating Party's permission.
2 The Designating Party shall bear the burden and expense of seeking protection in
3 that court of its confidential or highly confidential material and nothing in these
4 provisions should be construed as authorizing or encouraging a Receiving Party in
5 this Action to disobey a lawful directive from another court.

6

7 **9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED**
8 **IN THIS LITIGATION**

9 (a) The terms of this Order are applicable to information produced by a
10 Non-Party in this Action and designated as "CONFIDENTIAL" or "HIGHLY
11 CONFIDENTIAL-ATTORNEYS EYES ONLY." Such information produced by
12 Non-Parties in connection with this litigation is protected by the remedies and
13 relief provided by this Order. Nothing in these provisions should be construed as
14 prohibiting a Non-Party from seeking additional protections.

15 (b) In the event that a Party is required, by a valid discovery request, to
16 produce a Non-Party's confidential or highly confidential information in its
17 possession, and the Party is subject to an agreement with the Non-Party not to
18 produce the Non-Party's confidential information, then the Party shall:

19 (1) promptly notify in writing the Requesting Party and the Non-Party
20 that some or all of the information requested is subject to a confidentiality
21 agreement with a Non-Party;

22 (2) promptly provide the Non-Party with a copy of the Stipulated
23 Protective Order in this Action, the relevant discovery request(s), and a reasonably
24 specific description of the information requested; and

25 (3) make the information requested available for inspection by the
26 Non-Party, if requested.

27 (c) If the Non-Party fails to object or seek a protective order from this

court within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's confidential or highly confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the court. Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court of its Protected Material.

10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for

1 production without prior privilege review. Pursuant to Federal Rule of Evidence
2 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure
3 of a communication or information covered by the attorney-client privilege or
4 work product protection, the parties may incorporate their agreement in the
5 stipulated protective order submitted to the court.

6

7 **12. MISCELLANEOUS**

8 12.1 Right to Further Relief. Nothing in this Order abridges the right of any
9 person to seek its modification by the Court in the future.

10 12.2 Right to Assert Other Objections. By stipulating to the entry of this
11 Protective Order no Party waives any right it otherwise would have to object to
12 disclosing or producing any information or item on any ground not addressed in
13 this Stipulated Protective Order. Similarly, no Party waives any right to object on
14 any ground to use in evidence of any of the material covered by this Protective
15 Order.

16 12.3 Filing Protected Material. A Party that seeks to file under seal any
17 Protected Material must comply with Civil Local Rule 79-5. Protected Material
18 may only be filed under seal pursuant to a court order authorizing the sealing of the
19 specific Protected Material at issue. If a Party's request to file Protected Material
20 under seal is denied by the court, then the Receiving Party may file the information
21 in the public record unless otherwise instructed by the court..

22

23 **13. FINAL DISPOSITION**

24 After the final disposition of this Action, as defined in paragraph 4, within
25 60 days of a written request by the Designating Party, each Receiving Party must
26 return all Protected Material to the Producing Party or destroy such material. As
27 used in this subdivision, "all Protected Material" includes all copies, abstracts,

1 compilations, summaries, and any other format reproducing or capturing any of the
2 Protected Material. Whether the Protected Material is returned or destroyed, the
3 Receiving Party must submit a written certification to the Producing Party (and, if
4 not the same person or entity, to the Designating Party) by the 60 day deadline that
5 (1) identifies (by category, where appropriate) all the Protected Material that was
6 returned or destroyed and (2) affirms that the Receiving Party has not retained any
7 copies, abstracts, compilations, summaries or any other format reproducing or
8 capturing any of the Protected Material. Notwithstanding this provision, Counsel
9 are entitled to retain an archival copy of all pleadings, motion papers, trial,
10 deposition, and hearing transcripts, legal memoranda, correspondence, deposition
11 and trial exhibits, expert reports, attorney work product, and consultant and expert
12 work product, even if such materials contain Protected Material. Any such archival
13 copies that contain or constitute Protected Material remain subject to this
14 Protective Order as set forth in Section 4 (DURATION).

15

16 **14. VIOLATION OF THIS ORDER**

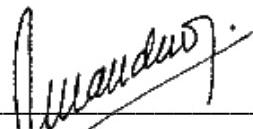
17 Any violation of this Order may be punished by any and all appropriate
18 measures including, without limitation, contempt proceedings and/or monetary
19 sanctions.

20

21 **IT IS SO ORDERED.**

22

23 Dated: July 12, 2019



24

25 Hon. Maria A. Audero

26 United States Magistrate Court

27 Central District of California